



000283

THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: September 20, 2007

IBA Report Number: 07-89

City Council Docket Date: September 24, 2007

Item Number: 202

Subject: Settlement of Binding Arbitration Award in Favor of the San Diego Chargers

OVERVIEW

This item requests authorization to pay the San Diego Chargers an amount not to exceed \$1.98 million to resolve all claims against the City resulting from the Binding Arbitration Award on February 3, 2007 for the 2002, 2003, 2004 and 2005 football seasons. Funds for this action are requested to be transferred from the Unallocated Reserve to the Public Liability Fund for expenditure to the San Diego Chargers.

FISCAL/POLICY DISCUSSION

Binding arbitration was agreed to after the Chargers Football Company LLC demanded to be compensated for present and future lost revenue, due to the loss of seats that resulted after renovation of Qualcomm Stadium in order to comply with the Americans with Disabilities Act (ADA) requirements.

During the Fiscal Year 2008 budget development process, the Mayor identified the need in his May Revision to supplement the budget by \$1.4 million in the Qualcomm Stadium Fund for costs related to payments to the Chargers under this agreement.

Following communication with the City Attorney's office, additional information was provided that was not included in the materials accompanying this action:

- The \$1.4 million payment budgeted in Fiscal Year 2008 is required for the 2006 football season, and is in addition to the \$1.98 million request.
- Payments under the agreement may either be annual or on a per game basis. It may be easier to audit for the full year than to do an audit after each game, so an annual payment may make economic sense.



Office of Independent Budget Analyst

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- The \$1.98 million payment is comprised of the following annual amounts:

○ 2002	\$204,941.87
○ 2003	\$165,182.93
○ 2004	\$434,598.49
○ 2004 post season	\$144,110.74
○ 2005	\$1,031,505.57
- If the Chargers meet the requirements set forth in the arbitration decision then annual payments may be due as long as (1) the Chargers are in Qualcomm Stadium and/or (2) the configuration of the stadium, i.e. number of seats, remains the same.
- The amount of the future payments is based on a formula approved by the arbitrator, which depends on the percentage of actual seats sold.

Based on discussions with representatives from the City Auditor and Comptroller's Office, it is our understanding that actions to increase appropriations by utilizing funds from the Unallocated Reserve require an amendment to the annual Appropriation Ordinance, and cannot be done by resolution. It is our understanding that an amendment to the Appropriation Ordinance is currently being prepared, and is planned to be provided in advance of the Council meeting.

Additional questions have been raised and answers were not received by the time this report was issued. Council members may wish to ask these questions or others during the Council meeting.

1. This action requests funding from the Unallocated Reserve, however the last report from Risk Management on the status of the Public Liability fund shows available funds of \$2.57 million. Can the Public Liability Fund be utilized first, before accessing the Unallocated Reserve?
2. Why are payments for past seasons coming from the Public Liability Fund and Reserve Funds, while some payments due under the same agreement are coming from the Qualcomm Stadium Fund?
3. Have any estimates been prepared for payments for future years?

CONCLUSION

The IBA believes the proper actions should be taken in a timely manner by the Mayor and City Council to comply with the order of the Superior Court to pay the judgment to the San Diego Chargers. Since additional information on this subject has come to our attention, we felt it would be best to provide it to the City Council and the public, to assist in the review and decision-making process. Additionally, it should be noted that the settlement agreement will have an ongoing fiscal impact, as long as the Chargers remain at Qualcomm Stadium.



Elaine DuVal
Fiscal & Policy Analyst



APPROVED: Andrea Tevlin
Independent Budget Analyst

000287

REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE ONLY)

2800189

TO:
CITY ATTORNEY2. FROM (ORIGINATING DEPARTMENT):
CITY ATTORNEY3. DATE:
9/11/2007

4. SUBJECT:

Settlement of Binding Arbitration Award in Favor of the San Diego Chargers

5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.)

Andrew Jones, DCA (35880) MS 59

6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.)

Carmen Sandoval (35834) MS 59

7. CHECK BOX IF REPORT TO
COUNCIL IS ATTACHED ☐

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	81140				9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.	81140				
ORGANIZATION	3502				
OBJECT ACCOUNT	4824				
JOB ORDER	81141				
C.I.P. NUMBER					
AMOUNT	\$1,980,339.60				

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>[Signature]</i>	9-11-07	8	DEPUTY CHIEF		
2	Risk Mgmt	<i>[Signature]</i>	9-11-07	9	<i>[Signature]</i>	<i>[Signature]</i>	9/12/07
3	Financial Mgmt	<i>[Signature]</i>	9/11/07	10	CITY ATTORNEY		
4	LIAISON OFFICE			11	ORIGINATING DEPARTMENT		
5	AUDITOR	<i>[Signature]</i>	9/11/07	DOCKET COORD: _____ COUNCIL LIAISON: _____			
6				<input checked="" type="checkbox"/> COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> REFER TO: _____ COUNCIL DATE: 9/24/07			
7							

11. PREPARATION OF:

☒ RESOLUTION(S)☐ ORDINANCE(S)☐ AGREEMENT(S)☐ DEED(S)

1. Authorize the Auditor and Comptroller to appropriate and transfer \$1,980,339.60 from the Unallocated Reserve to the Public Liability Fund.

2. Authorizing payment from the Public Liability Fund (81140) the sum of \$1,980,339.60 in settlement of each and every claim against the City, its agents and employees, resulting from the binding arbitration settlement with the San Diego Chargers.

3. Authorizing the City Auditor and Comptroller to issue a check in the amount of \$1,980,339.60 from Public Liability Fund (81140) to the San Diego Chargers and their attorney of record Charles H. Dick, Jr and Abby B. Silverman, Baker & McKenzie LLP.

11A. STAFF RECOMMENDATIONS:

Adopt the Resolution

12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S):

COMMUNITY AREA(S):

ENVIRONMENTAL IMPACT:

HOUSING IMPACT:

OTHER ISSUES:

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: _____ REPORT NO: _____
ATTENTION: COUNCIL PRESIDENT AND CITY COUNCIL
ORIGINATING DEPARTMENT: CITY ATTORNEY
SUBJECT: PAYMENT OF BINDING ARBITRATION AWARD
COUNCIL DISTRICT(S): 6
CONTACT/PHONE NUMBER: ANDREW JONES or CARMEN SANDOVAL
(619) 533-5800

REQUESTED ACTION: Authorizing the Mayor and the City Council to pay the San Diego Chargers (CHARGERS FOOTBALL COMPANY LLC.), a total sum of \$1,980,339.60 in settlement of each and every claim against the City, its agents and employees, resulting from the Binding Arbitration Award on February 3, 2006, for the 2002, 2003, 2004, and 2005 seasons.

STAFF RECOMMENDATION: Approve the resolution

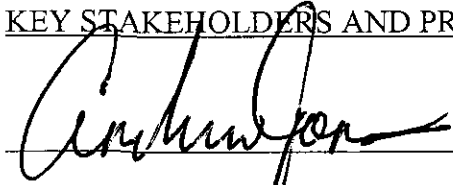
EXECUTIVE SUMMARY: The proposed payment would resolve all claims brought by the San Diego Chargers which were the subject of Binding Arbitration for the 2002, 2003, 2004, and 2005 seasons. Binding arbitration was agreed to after the Chargers Football Company LLC demanded to be compensated for present and future loss revenue, due the loss of seats that resulted after renovation of Qualcomm Stadium in order to comply with ADA requirements. Future payments will depend on the percentage of actual seats sold based on the formula approved by the Arbitrator.

FISCAL CONSIDERATIONS: The Auditor will be authorized to appropriate and transfer \$1,980,339.60 from Unallocated Reserves to the Public Liability Fund. The Arbitration Award will be paid from the Public Liability Fund.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: This item was heard in closed session when authority was obtained to enter into binding arbitration.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: NA

KEY STAKEHOLDERS AND PROJECTED IMPACTS: NA



Originating Department



Deputy Chief/Chief Operating Officer

000291

The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

CERTIFICATE OF UNALLOTTED BALANCE

AC 2800189

ORIGINATING

DEPT. NO.:

45

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: _____

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

FUND OVERRIDE ☐

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$1,980,339.60

Vendor: San Diego Chargers and their attorney of record Charles H. Dick, Jr and Abby B. Silverman, Baker & McKenzie LLP

Purpose: Authorize the Auditor and Comptroller to appropriate and transfer funds from the Unallocated Reserve to the Public Liability Fund. Authorize payment from the Public Liability Fund resulting from binding arbitration settlement with the San Diego Chargers and to authorize the City Auditor/Comptroller to issue a check to above listed vendor.

Date: September 11, 2007

By: 

9/11/07

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
001	0	100			9544					\$1,980,339.60
TOTAL AMOUNT										\$1,980,339.60

AC-361 (REV 2-92)

FUND OVERRIDE ☐

AC 2800189

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

CHARGERS FOOTBALL COMPANY, LLC, a
California limited liability company,

Petitioner,

v.

The Honorable GERALD R. "JERRY"
SANDERS, Mayor and Chief Executive Officer
of the CITY OF SAN DIEGO, a municipal
corporation,

Respondent.

CITY OF SAN DIEGO, a municipal
corporation,

Real Party In Interest.

Case No. GIC 862953

~~PROPOSED~~ PEREMPTORY WRIT
OF MANDATE TO COMPEL
RESPONDENT TO PAY JUDGMENT

Dept: 25
Judge: Hon. Rafael Arreola

To the Honorable Gerald R. "Jerry" Sanders, Mayor and Chief Executive Officer of the City of San Diego:

WHEREAS Chargers Football Company, LLC, served and filed its noticed motion and verified petition for peremptory writ of mandate, and a hearing was held on August 29, 2007;

WHEREAS it appears to this court that the Chargers have no other plain, speedy, and adequate remedy in the ordinary course of law;

WHEREAS it appears to this court that you have failed to perform your legal duty, as the duly elected Mayor and Chief Executive Officer of the City and pursuant to Government Code

1 section 970.2, to pay the Chargers' Judgment against the City entered in this Court on May 11, 2006;

2 THEREFORE, you, the Honorable Gerald R. "Jerry" Sanders, are hereby commanded, on
3 behalf of the City, on ~~on before~~ ^{9th} November 27, 2007 to:

4 Pay the Judgment, \$1,980,339.60 plus interest from February 3, 2007, to the Chargers.

5
6
7 ~~Witness the Honorable Rafael Arceola, Judge of the Superior Court.~~ ^{9th}

8 Attest my hand and the seal of this court this ^{9th} ~~4th~~ day of September, 2007.

9
10
11 Michael M. Roddy

12 Clerk



13
14 By J. Belden
15 Deputy Clerk

J. BELDEN

FILED

Clerk of the Superior Court

AUG 31 2007

By: J. BELDEN, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

CHARGERS FOOTBALL COMPANY, LLC, a
California limited liability company,

Petitioner,

v.

The Honorable GERALD R. "JERRY"
SANDERS, Mayor and Chief Executive Officer
of the CITY OF SAN DIEGO, a municipal
corporation,

Respondent.

CITY OF SAN DIEGO, a municipal
corporation,

Real Party In Interest.

Case No. GIC 862953

~~PROPOSED~~ ORDER DIRECTING
ISSUANCE OF PEREMPTORY WRIT
OF MANDATE TO COMPEL
RESPONDENT TO PAY JUDGMENT

Dept: 25
Judge: Hon. Rafael Arreola

This matter came on regularly for hearing before this court on August 29, 2007 in
Department 25 of the San Diego County Superior Court, located at 220 West Broadway, San Diego,
California, pursuant to the noticed motion and verified petition of Chargers Football Company, LLC.

The matter was argued and submitted for decision, the court was fully advised, and the court
has directed that an order and a peremptory writ of mandate should issue in the matter;

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1 THEREFORE, it is ordered that:

2 A peremptory writ of mandate issue commanding the Honorable Gerald R. "Jerry" Sanders,
3 Mayor and Chief Executive officer of the City of San Diego, to pay the Chargers' Judgment against
4 the City in the amount of \$1,980,339.60 plus interest from February 3, 2007. Execution of the Writ
5 of Mandate is stayed until November 27, 2007.

6
7
8 Dated: 8-31, 2007


Hon. Rafael Arreola
Judge of the Superior Court

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING ORDINANCE NO. O-19652 (NEW SERIES) ENTITLED "AN ORDINANCE ADOPTING THE ANNUAL BUDGET FOR THE FISCAL YEAR 2007-2008 AND APPROPRIATING THE NECESSARY MONEY TO OPERATE THE CITY OF SAN DIEGO FOR SAID FISCAL YEAR," BY AUTHORIZING THE AUDITOR AND COMPTROLLER TO APPROPRIATE AND TO TRANSFER UP TO \$1,980,339.60 FROM THE CITY'S GENERAL FUND UNALLOCATED RESERVE TO THE PUBLIC LIABILITY FUND TO PAY AN ARBITRATION SETTLEMENT WITH THE SAN DIEGO CHARGERS

WHEREAS, on July 30, 2007, the City Council adopted an Ordinance No. O-19652 entitled An Ordinance Adopting The Annual Budget For The Fiscal Year 2007-2008 And Appropriating The Necessary Money To Operate The City Of San Diego For Said Fiscal Year [Annual Appropriation Ordinance]; and

WHEREAS, the City and the Chargers Football Company LLC (San Diego Chargers) have settled claims brought by the San Diego Chargers for the 2002, 2003, 2004 and 2005 seasons as a result of renovations to Qualcomm Stadium in order to comply with American with Disabilities Act (42 U.S.C. §12101 et. seq.); and

WHEREAS, the settlement requires that the City pay the Chargers the sum of \$1,980,339.60, and such amount has not been budgeted in the Public Liability Fund; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Report of the City Attorney is hereby accepted.

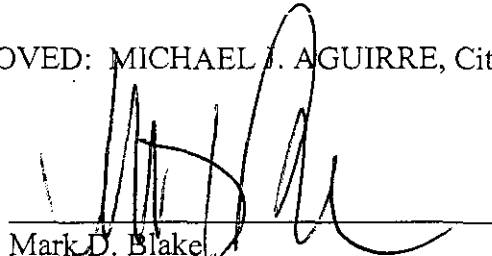
Section 2. That the Auditor and Comptroller is authorized and directed to appropriate and to transfer up to \$1,980,339.60 from the City's General Fund Unallocated Reserved to the Public Liability Fund, and that the Auditor and Comptroller is hereby authorized and directed to pay or cause to be paid such amount to the San Diego Chargers.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. This ordinance is declared to take effect and be in force immediately upon its passage after two (2) public hearings pursuant to the authority contained in Sections 71, 275, and 295 of the Charter of the City of San Diego.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By


Mark D. Blake
Chief Deputy City Attorney

MDB:bw:jdf
9/20/07
Or.Dept:City Attorney
O-2008-31